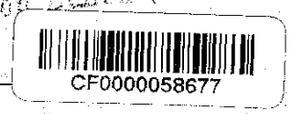
XII-189 (Jail) C. J. P. R./I-91

CrA 997/94 (2)

APPEAL OF PRISONER

Division Bench (Criminal)



No. 910/94 Name [illegible]

Father's name [illegible]

Residence [illegible] Age 32 yrs

Sentenced to [illegible] on 30/7/1994 ST NO 55/94

Under Section 302 IPC by [illegible]

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all. if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement —

2 Date on which copy received 8/8/1994

3 Date on which Appeal sent —

4 Whether the prisoner wishes to be represented or not. Yes.

No. 910/94 Name [illegible]

Confined in C-Class Jail [illegible]

No. 645 /Law/ Dated 10/8/94 1994

Forwarded to the [illegible]

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent,
Central Jail, Raipur. (M.P.)

Date of receipt in Office —

Date of receipt of record to accompany the —

Memo of Appeal to the Appellate court —

No. — Dated — 199 —

Forwarded to the —

Date of receipt in Appellate court —

High Court of Madhya Pradesh
JABALPUR
24 AUG 1994
Reg. No. 720
Recent Clerk

[P. T. O.]

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(33)

आदेश पत्रक

मामला क्रमांक CA 997/94 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

25-1-2006

Mrs. Savita Tiwari, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

Oral judgment dictated on Dais.

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of the Cr.P.C. appellant Dukhuram has questioned the legality of the judgment of conviction and order of sentence dated 30th July, 1994, passed by the Sessions Judge, Raipur, in Sessions Trial No.55/94, whereby learned Sessions Judge after convicting the accused for commission of offence under Section 302 of the I.P.C. for committing the murder of his wife namely, Rishibai, sentenced him to undergo imprisonment for life.

The following is a brief account of the prosecution case and other relevant facts:-

On 30th June, 1993, the accused along with his wife Rishibai (since deceased) had gone to village: Jithri Dumar and had stayed for some time with Jodhan (PW-9). Thereafter, they left together for their village Tanwarbahar at about 12 noon, on the way the accused and Smt. Rishibai started quarrelling and the accused assaulted Rishibai with fists, blows & lathi. He removed her

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आदेश पत्रक

मामला क्रमांक G.A.997/94 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

sari, tied one end of the sari around her neck, dragged her up to Palash tree and thereafter, he hanged her with a branch of Palash tree with the help of other corner of the sari which was tied on the neck of Rishibai. On account of hanging Rishibai died due to asphyxia. The incident was witnessed by Tapeshwar (PW-2) & Tarachand (PW-3) who were eating black berry from the tree standing in the field of Surajbhan. They went to Aasha Ram (PW-1) and narrated the incident to him. On hearing from PW-2 & PW-3, Aasha Ram (PW-1) left for the place and saw the hanging body of Rishibai on Palash tree with the help of sari. The accused was also standing there. Thereafter, he informed the village Kotwar Budhuram, they went to Police Station: Gariaband and lodged the report Ex.P-1. After registering the case Ex.P-1 the Station House Officer left for the scene of occurrence, sent the body of Rishibai for post-mortem under Ex.P-2 to the Primary Health Centre, Gariaband, where Dr. Smt. Snehlata (PW-5) conducted post-mortem and prepared the post-mortem report Ex.P-3. The Investigating Officer after giving notice (Ex.P-10A) to the Panchas prepared Panchnama of the body Ex.P-10 and also prepared the site plan Ex.P-11.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, Gariaband, who in turn committed the case to the Sessions Judge, Raipur, for trial.

The prosecution in order to establish charge against the accused examined 13 witnesses. Statement of the accused was recorded under Section

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he is innocent and has been falsely implicated in the crime.

After hearing the arguments of Additional Public Prosecutor and counsel for the accused, learned Sessions Judge convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Mrs. Savita Tiwari, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor on behalf of the State/ respondent.

As far as the involvement of the accused in committing the murder of Rishibai is concerned, learned counsel for the appellant argued that the evidence of Tapeshwar (PW-2) & Tarachand (PW-3) is not worth reliance as they have stated in their evidence that the accused before hanging Rishibai assaulted her with fists, kicks & Lathi, whereas no injuries were found on the body of Rishibai.

On the other hand, Mr. Deo supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have scrutinized the evidence. As per the prosecution case, the crime in question was witnessed by Tapeshwar (PW-2) & Tarachand (PW-3) who were minors aged about 11 years & 10 years respectively, at the time of incident. The trial Court after placing reliance on their evidence convicted the accused.

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित पृ	आदेश हस्ताक्षर सहित — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Tapeshwar (PW-2) & Tarachand (PW-3) have stated in their evidence that on the fateful day they went to eat black berry and at the time of incident they were eating black berry in the field of Surajbhan. They saw that the accused was assaulting his wife with hand & fist and with Lathi, thereafter he removed the sari of Rishibai. One end of the sari was tied on the neck of Rishibai and the accused dragged her up to the Palash tree, climbed the tree holding another end of the sari in his hand and tied the other end of the sari with the branch of the tree. They immediately left for the village and informed Aasha Ram (PW-1) who has stated in his evidence that on giving this information by PW-2 & PW-3 he left for the scene of occurrence and saw that Rishibai was hanging with the branch of the tree, the accused was standing near that place and no other person was standing there.

It is true that these two child witnesses have stated that the accused was assaulting his wife Rishibai (since deceased) with fists, slaps and Lathi. It is also true that as per the medical report no injury was found on the body of Rishibai. But, merely on this ground the evidence of Tapeshwar (PW-2) & Tarachand (PW-3) cannot be discarded because, in the first instance, their evidence stands corroborated by the evidence of Aasha Ram (PW-1) who has stated that on information given by Tapeshwar (PW-2) & Tarachand (PW-3) he immediately left for the scene of occurrence and saw the hanging body of Rishibai on the Palash tree with the help of sari, and the accused was also standing at the place of occurrence. The accused has not stated in his statement under Section 313 of the Cr.P.C. that some body else hanged Rishibai

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मामला क्रमांक G.A.997/94 सन् ~~200~~

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

on the tree. There is no reason for Aasha Ram (PW-1) to falsely implicate the accused in a crime that too which relates to hanging of his own wife Rishibai. Even Tapeshwar (PW-2) & Tarachand (PW-3) were minors and there was reason for them to implicate the accused in a false case. Moreover, the evidence of Tapeshwar (PW-2) & Tarachand (PW-3) stands corroborated by the medical evidence also, because Dr. Smt. Snehlata (PW-5) who conducted post-mortem on the body of Rishibai has categorically stated that there was a ligature mark on the neck of Rishibai and there was a mark of knot of sari on the neck of the deceased and that she died on account of asphyxia on account of hanging. The evidence of Tapeshwar (PW-2) & Tarachand (PW-3) further lends support from the fact that in the scuffle between husband & wife accused Dukhuram also sustained injuries and he was examined by Dr. A.A. Siddique (PW-10) who has stated in his evidence that there was a lacerated wound on the right side of lower lip in the size of 1.3 cms. x 0.2 cms. x 0.2 cms. and there was another lacerated wound in the size of 1.4 cms. x 0.2 cms. x 0.2 cms. on left side of the above injury.

Therefore, in view of the above clinching evidence, if no injury mark of beating was found on the body of Rishibai by the accused with fists and Lathi, the above medical and ocular evidence cannot be disbelieved. There is nothing on record, which shows that with which force the accused assaulted Rishibai by fists, slaps & Lathi.

In the circumstances, we do not find any substance in the argument of learned counsel for the accused/appellant. In view of the above discussion, we

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

do not find any reason to differ with the finding of the trial Court convicting the accused in connection with the murder of his wife. Therefore, we do not find any illegality and infirmity in the judgment of the trial Court.

In the result, there is no force in the instant criminal appeal, same is liable to be dismissed and it is accordingly, dismissed.

Consequently, I.A.Nos.1188/2004, 1189/2004 and 2517/2005 stand disposed of.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Soma

YOGENDRA SINGH KANWAR
Digitally signed by YOGENDRA SINGH KANWAR
Date: 2025.02.05 11:28:13 +0530

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